

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JOHN R. YOUNG,

*Plaintiff,*

v.

MERRILL LYNCH & CO., INC.,

*Defendant.*

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CIVIL ACTION NO. 09-1799

**DEFENDANT'S STATEMENT IN RESPONSE  
TO ORDER CONCERNING REMOVAL**

Defendant Merrill Lynch & Co., Inc. ("Merrill Lynch") submits this statement in response to the Court's Order Concerning Removal, dated June 17, 2009.

1. Merrill Lynch first received a copy of the summons and complaint in the state court action on or after May 12, 2009.

2. Merrill Lynch's designated agent for service of process, The Corporation Trust Company, dba CT Corporation, was served with a copy of the summons and complaint in the state court action on May 12, 2009.

3. Merrill Lynch is a Delaware corporation with its principal place of business in New York. There are no other defendants in this action and, therefore, no Defendant in this action is a citizen of Texas, the state in which this Court sits.

4. Plaintiff seeks damages equal to the lump sum cash value of the 14,802 Restricted Units that he alleges Merrill Lynch granted him under the terms of Merrill Lynch's Long-Term Incentive Compensation Plan for Managers and Producers ("LTICP-MP"). (*See* Defendant's Notice of Removal, ¶5.) Plaintiff further alleges that the lump sum cash value of his Restricted

Units is determined by multiplying those units by the Fair Market Value of a share of Merrill Lynch common stock on any day during the 90-day period ending on September 15, 2008, the date a merger agreement was signed between Merrill Lynch and Bank of America Corporation. (*Id.*) The highest such Fair Market Value for a share of Merrill Lynch Common Stock was \$36.94. (*Id.* at ¶6.) Multiplying 14,802 Restricted Units by \$36.94 yields a product of \$546,785.88, which is the minimum value of Plaintiff's damages based on his allegations and the relevant historic price of a share of Merrill Lynch common stock. (*Id.*)

5. Not applicable.

6. Not applicable.

7. Not applicable.

8. Plaintiff John R. Young is a citizen of Texas. Merrill Lynch is a citizen of Delaware and New York.

DATED: June 25, 2009.

Respectfully submitted,

s/Dean J. Schaner

Dean J. Schaner

Texas Bar No. 17726500

Southern District Bar No 12457

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**CERTIFICATE OF SERVICE**

Based on the FEDERAL RULES OF CIVIL PROCEDURE, I served a copy of this document by electronic transmission and certified mail, return receipt requested, to Michael K. Oldham, 1100 Louisiana, Suite 5300, Houston, Texas 77002, on June 25, 2009.

s/Dean J. Schaner  
Dean J. Schaner

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